

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION ONE/SUBREGION 34

FARERI ASSOCIATES, LP, GREENWICH
PARK, GREENWICH PREMIER SERVICES
CORP. and BRENWOOD HOSPITALITY,
LLC, A SINGLE EMPLOYER

-and-

EXCEPTIONS TO ALJ DECISION
FILED BY FARERI ASSOCIATES, LP,
GREENWICH PARK, GREENWICH
PREMIER SERVICES CORP. AND
BRENWOOD HOSPITALITY, LLC, A
SINGLE EMPLOYER

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 32 BJ

Case Nos. 01-CA-188158
 01-CA-190046
 01-CA-191779
 01-CA-214016

Fareri Associates (“Fareri”) files the following exceptions to the Decision of the Administrative
Law Judge David I. Goldman in this matter, dated May 13, 2019 (the “Decision”):

1. **Finding** that the “the evidence of violation is overwhelming. In part, this is due to the direct evidence of anti-union animus infecting the hiring process.”
Decision at 38: 21–22. There is insufficient evidence to support this conclusion.
2. **Finding** that “anti-union animus motivated the Respondent's hiring is powerfully obvious on this record.” Decision at 38: 38–39. There is insufficient evidence to support this conclusion.
3. **Finding** that “it is important to point out that the evidence supports the conclusion that the Respondent's discriminatory hiring scheme was in place from the first day of hiring, November 5.” Decision at 41: 31–32. There is insufficient evidence to support this conclusion.

4. **Finding** that the “AffinEco employees provided everything that the Respondent needed, and the Respondent had no workforce to clean.” Decision at 41–42: 35–1. There is insufficient evidence to support this conclusion.
5. **Finding** that the Respondent offers zero explanation for not utilizing this obvious solution to its November 5 staffing problem. The fact that the Respondent did not look to the experienced, out-of-work, but unionized AffinEco employees on November 5 is by itself some evidence of discriminatory motive.” Decision at 42. 8–9. There is insufficient evidence to support this conclusion.
6. **Finding** that “We know that less than two weeks before November 5, Sheskier and/or John Fareri are asking in frustration, "Are we stuck with the Union? Are we stuck with the Union?" when confronted with the realities of the union contract. They were told "that's something you need to seek legal counsel for," and then promptly sought counsel, contacting and meeting with labor and employment counsel for undisclosed reasons.” Decision at 42: 41–45. There is insufficient evidence to support this conclusion.
7. **Finding** that “the unlawful hiring scheme was in effect from the first day of hiring, on November 5.” Decision at 43: 6–7. There is insufficient evidence to support this conclusion.
8. **Finding** Respondent “does not claim that they were rejected for personal nondiscriminatory reasons. Rather, the essential claim by the Respondent is that it hired nondiscriminatorily and it was just happenstance that more of the

former AffinEco employees were not hired. This will not work.” Decision at 43: 20–23. There is insufficient evidence to support this conclusion.

9. **Finding** that “the Respondent offers no credible explanation at all for its indifference and willingness to ignore on November 5, the experienced AffinEco workers who it knew had just lost their jobs on the evening of November 4.” Decision at 43: 25–27. There is insufficient evidence to support this conclusion.
10. **Finding** that “The [rebuttal] burden [under *Wright Line*] is not and cannot be met by the Respondent.” Decision at 43: 14–17. There is insufficient evidence to support this conclusion.
11. **Finding** that The Respondent's chief argument is simply a waste of ink. Referenced throughout the trial, and extensively argued on brief, but utterly beside the point, is its claim that it refused to renew AffinEco’s contract purely because of price considerations and not out of antiunion animus.” Decision at 44: 2–4. There is insufficient evidence to support this conclusion.
12. **Finding** that “The Respondent's fervent contention that it’s nonrenewal of the AffinEco contract was legitimate is no defense at all to the allegations in this case.” Decision at 44: 5–10. There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.
13. **Finding** that the evidence demonstrates that the Respondent's hiring discrimination began on November 5, when it ignored the experienced and displaced AffinEco employees in favor of inexperienced friends of friends,

and various people hired sight unseen to begin cleaning of the GOP. Thus, even the former AffinEco employees who were hired were the victims of hiring discrimination until hired.” Decision at 44: 23–27. There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.

14. **Finding** that “The Respondent unlawfully refused to ever hire 13 of the former AffinEco cleaners. Combined with the eight former employees who it has been found to have discriminatorily delayed hiring, the predecessor's employees would have easily constituted a majority, even of the full complement of 33 or 34. Accordingly, the Union retained its presumption of majority support and the duty to bargain remained intact.” Decision at 51: 14–18. There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.
15. **Finding** that “The Respondent has been found to have discriminated in hiring against every one of the predecessor's employees.” Decision at 52: 18–19. There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.
16. **Finding** that “The Respondent sought not just to avoid the AffinEco-Union labor agreement, but also engaged in a scheme of discriminatory hiring in an effort to avoid a bargaining obligation. The end result of its unlawful gambit is that it discriminated against all the employees.” Decision at 52–53: 37–3. There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.

17. **Ruling** that allowed General Counsel Ex. 55 to be entered into the record. There is insufficient legal justification for this ruling.
18. **Conclusion** that “The following employees of the Respondent at the Greenwich Office Park constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All service employees in any facility, excluding commercial office buildings under 100,000 square feet, in Westchester, Putnam, Dutchess, Rockland, Orange and Sullivan Counties in the State of New York and Fairfield County in the State of Connecticut.” Decision at 64: 17-23 There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.
19. **Conclusion** that “The Respondent, beginning on or about November 5, 2016, unlawfully discriminated by refusing to consider for hire or hire the following former employees of AffinEco because they were represented by the Union, in violation of Section 8(a)(3) and (1) of the Act: Favian Brito, Marcia Cordero, Elidel Garfias, Ivette Huguet, Joel Jacome, Marcela Jaramillo, David Narvaez, Sonia Osorio, Lucia Perez, Yolanda Revilla, Silvia Rios, Nestor Trivino, Rosa Vasquez, Regina Cruz, Miguel Gonzalez, Segundo Zuniga, Ana Elicea, Mayra Maurad, Rosalia Bravo-Affon, Indiana Pena, and Irma Arango.” Decision at 65: 5-11. There is insufficient evidence to support this conclusion.
20. **Conclusion** that “The Respondent, since on or about November 5, 2016, by failing and refusing to recognize and bargain with the Union as the exclusive collective bargaining representative of the above- described unit,

violated Section 8(a)(5) and (1) of the Act.” Decision at 65: 25-27. There is insufficient evidence to support this conclusion.

21. **Conclusion** that “The Respondent, since on or about November 5, 2016, by unilaterally setting initial terms and conditions of employment for unit employees without first giving notice to and offering to bargain with the Union about those initial terms and conditions, violated Section 8(a)(5) and (1) of the Act.” Decision at 65: 29–32. There is insufficient evidence to support this conclusion. Furthermore, this conclusion represents a misapplication of law.

22. **Remedy** determining that “The Respondent, having unlawfully and discriminatorily refused to consider for hire or hire Favian Brito, Marcia Cordero, Elidel Garfias, Ivette Huguet, Joel Jacome, Marcela Jaramillo, David Narvaez, Sonia Osorio, Lucia Perez, Yolanda Revilla, Silvia Rios, Nestor Trivino, and Rosa Vasquez, Decision at 64–65: 46-4. There is insufficient evidence to support this remedy. Furthermore, this remedy represents a misapplication of law.

23. **Remedy** determining that the Respondent “unlawfully and discriminatorily refused to consider for hire or hire, but then having subsequently hired Regina Cruz, Miguel Gonzalez, Segundo Zuniga, Ana Elicea, Mayra Maurad, Rosalia Bravo-Affon, Indiana Pena, and Irma Arango. Decision at 65: 6–8. There is insufficient evidence to support this remedy. Furthermore, this remedy represents a misapplication of law.

24. **Remedy** determining that The Respondent “unlawfully refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees. Decision at 65: 40–42. There is

insufficient evidence to support this remedy. Furthermore, this remedy represents a misapplication of law.

25. **Remedy** determining that The Respondent “unlawfully unilaterally established the initial terms and conditions of employment for unit employees without first giving notice and bargaining with the Union about those initial terms and conditions...” Decision at 65: 47–49. There is insufficient evidence to support this remedy. Furthermore, this remedy represents a misapplication of law.
26. **Remedy** determining that the “unfair labor practices of the Respondent justify the additional remedy of a notice reading. The violations are egregious. The Respondent brazenly denied not just union representation but also employment to 13 employees, and unlawfully terminated three more. This misconduct must be considered the centerpiece of its violations, and is, obviously, highly coercive conduct. But in addition, this unlawful conduct occurred in the context of multiple instances of unlawful announcements to employees that their union status with AffinEco eliminated their hiring prospects, threats and unlawful interrogation, and efforts to ferret out former AffinEco employees who may have slipped through. It is not without reason that the record demonstrates that former AffinEco employees felt compelled to hide the fact of their former employment when individually seeking work at the GOP from the Respondent. Moreover, the small size of the unit, and the fact that the majority of the current unit employees (once the instatement and reinstatement remedies are observed) were the victims of discrimination and/or unlawful threats or

interrogation, only compounds the need for a notice reading remedy. Finally, the fact that the highest ranking official of the Respondent-the owner and guiding force for all of the respondent-entities, John Fareri-was proven to be deeply involved in the Respondent's discriminatory conduct, militates for a remedy that includes public reading. Decision at 67: 18–33. There is insufficient evidence to support this remedy. Furthermore, this remedy represents a misapplication of law.

27. **Recommendation** that Respondent Cease and desist from¹:

(h) Refusing to consider for hire or hire employees because they were represented by a union in their previous employment.

(j) Failing and refusing to recognize and bargain with the Service Employees International Union, Local 32BJ (Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(k) Unilaterally establishing initial terms and conditions of employment without bargaining collectively with the Union to agreement or impasse.

(m) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of

28. **Recommendation** that Respondent take the following affirmative action necessary to effectuate the policies of the Act²:

¹Exception taken to each subsection of Exception 27 based on insufficient evidence and a misapplication of law.

²Exception taken to each subsection of Exception 28 based on insufficient evidence and a misapplication of law.

(a) Within 14 days of this Order, offer Favian Brito, Marcia Cordero, Elide Garfias, Ivette Huguet, Joel Jacome, Marcela Jaramillo, David Narvaez, Sonia Osorio, Lucia Perez, Yolanda Revilla, Silvia Rios, Nestor Trivino, and Rosa Vasquez, instatement in the positions for which they would have been hired absent the Respondent's' unlawful discrimination, or, if those positions no longer exist, in substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employees hired in their place.

(c) Make Favian Brito, Marcia Cordero, Elidel Garfias, Ivette Huguet, Joel Jacome, Marcela Jaramillo, David Narvaez, Sonia Osorio, Lucia Perez, Yolanda Revilla, Silvia Rios, Nestor Trivino, Rosa Vasquez, Indiana Pena, Maya Maurad, Rosalia Bravo-Affon, Regina Cruz, Miguel Gonzalez, Segundo Zuniga, Ana Elicea, and Irma Arango, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision

(d) Compensate Favian Brito, Marcia Cordero, Elidel Garfias, Ivette Huguet, Joel Jacome, Marcela Jaramillo, David Narvaez, Sonia Osorio, Lucia Perez, Yolanda Revilla, Silvia Rios, Nestor Trivino, Rosa Vasquez, Indiana Pena, Maya Maurad, Rosalia Bravo-Affon, Regina Cruz, Miguel Gonzalez, Segundo Zuniga, Ana Elicea, and Irma Arango, for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 1, within 21 days of the date the amount of back pay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar

years for each employee.

(e) Within 14 days of the date of this order, remove from its files any reference to the unlawful refusal to consider or hire Favian Brito, Marcia Cordero, Elidel Garfias , Ivette Huguet, Joel Jacome, Marcela Jaramillo, David Narvaez, Sonia Osorio, Lucia Perez, Yolanda Revilla, Silvia Rios, Nestor Trivino, Rosa Vasquez, Regina Cruz, Miguel Gonzalez, Segundo Zuniga, Ana Elicea, Mayra Maurad, Rosalia Bravo-Affon, Indiana Pena, and Irma Arango, and any reference to the unlawful terminations of Indiana Pena, Maya Maurad, and Rosalia Bravo-Affon, and within 3 days thereafter, notify each of them in writing that this has been done and that the refusal to hire and/or the termination will not be used against them in any way. Recognize and, on request of the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the Greenwich Office Park in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All service employees in any facility, excluding commercial office buildings under 100,000 square feet, in Westchester, Putnam, Dutchess, Rockland, Orange and Sullivan Counties in the State of New York and Fairfield County in the State of Connecticut.

(h) On request of the Union, rescind any changes from the terms and conditions in employment that existed immediately prior to the Respondent's takeover of the cleaning work performed by AffinEco at the Greenwich, Connecticut , Greenwich Office Park, retroactively restoring the preexisting terms and conditions of employment,

including wage rates and benefit plans, until it negotiates in good faith with the Union to agreement or to impasse.

(i) Make the unit employees whole for any losses caused by the Respondent's failure to apply the terms and conditions of employment that existed for cleaners immediately prior to its takeover of the cleaning work at the GOP, and for its unilateral contracting out of the bargaining unit's cleaning work, in the manner described in the remedy section of this decision.

(j) Make all contributions to employee benefit funds that it failed to make due to its unlawful unilateral change in terms and conditions of employment, including any additional amounts due to the funds on behalf of unit employees in the manner set forth in the remedy section of this decision.

(k) Reimburse unit employees for any expenses resulting from the failure to contribute to employee benefit funds in the manner set forth in the remedy section of this decision.

(l) Compensate unit employees affected by the unilateral establishment in terms and conditions of employment and the unilateral contracting out of the unit's cleaning work for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 1, within 21 days of the date the amount of back pay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(m) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(n) Within 14 days after service by the Region, post at its headquarters at 2 Dearfield Avenue, Greenwich, Connecticut, at the Greenwich Office Park, and at the J House Hotel, in Greenwich, Connecticut copies of the attached notice marked “Appendix” in both English and Spanish. 76 Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means; if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate

and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 5, 2016.

(o) Within 14 days after service by the Region, hold a meeting or meetings during work time, scheduled to ensure the widest possible attendance, at which the attached notice marked "Appendix" is to be publicly read in English and Spanish on work time to the employees by John J. Fareri (or if he is no longer employed by the Respondent by an equally high-ranking management official) in the presence of Fareri, Christopher Sheskier, Christian Bilella, Raul Hernandez, and Julio Roldan, a Board agent and an agent of the Union, if the Union so desires, or, at the Respondent's option, by a Board agent in the presence of Fareri, Sheskier, Bilella, Hernandez, and Roldan, and, if the Union so desires, an agent of the Union.

(p) Within 21 days after service by the Region, file With the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

DATED: July 12, 2019

SIEGEL, O'CONNOR, O'DONNELL
& BECK, P.C.

By: 

Ryan A. O'Donnell Esq.

Siegel, O'Connor, O'Donnell & Beck,
P.C.

150 Trumbull Street – 5th Floor

Hartford, CT 06103

Attorneys for Fareri Associates, LP,
Greenwich Premier Services Corp., and
Brenwood Hospitality, LLC, A Single
Employer

CERTIFICATE OF SERVICE

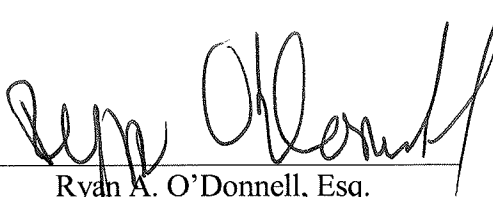
I hereby certify that on this date the foregoing Exceptions to Decision of Administrative Law Judge David I. Goldman which is e-filed with the Board, was served electronically upon the persons below:

Paul J. Murphy
Acting Regional Director
National Labor Relations Board
Acting Regional Director: Region 1
10 Causeway Street
Room 601
Boston, MA 02222-1001
Paul.murphy@nlrb.gov

Rick Concepcion, Esq
National Labor Relations Board
450 Main Street
Hartford, CT 06517
Rick.concepcion@nlrb.gov

Jessica Drangel Ochs, Esq.
1350 Broadway
Suite 501
New York, NY 10018
jochs@seiu32bj.org

DATED: July 12, 2019



Ryan A. O'Donnell, Esq.